

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA and
THE STATE OF INDIANA,

Plaintiffs,

v.

THE CITY OF ANDERSON, INDIANA,

Defendant.

CIVIL ACTION NO.

COMPLAINT

The United States of America (the “United States”), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency (“EPA”), and the State of Indiana (the “State”), on behalf of the Indiana Department of Environmental Management (“IDEM”), file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought against the City of Anderson, Indiana (the “Defendant”) seeking civil penalties and injunctive relief for the Defendant’s violations of the Clean Water Act, 33 U.S.C. § 1251 et seq. (the “CWA”), Title 13 of the Indiana Code, Title 327 of the Indiana Administrative Code, Articles 2 and 5, and its National Pollutant Discharge Elimination System permit (the “NPDES Permit”) issued pursuant to the CWA. The State is a party to this action pursuant to CWA Sections 309(e) and 505, 33 U.S.C. § 1319(e) and 1365. IDEM is charged with the administration and enforcement of the requirements of the CWA in and for the State of Indiana. Indiana Code § 13-13-5-1(1)

JURISDICTION

2. This Court has jurisdiction over the subject matter of this action under CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. This Court has personal jurisdiction over the Defendant pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b).

4. Venue is proper in this District pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), because the Defendant is found in and transacts business in the Southern District of Indiana and because the acts or omissions which constitute the basis of this Complaint occurred within this district.

THE DEFENDANT

5. The Defendant is a municipality and political subdivision of the State of Indiana, and is a “person” as defined by CWA Section 502(5), 33 U.S.C. § 1362(5).

6. The Defendant owns and operates Publicly Owned Treatment Works (“POTW”) including an associated sewer system that receive and manage domestic sewage, industrial wastewater, and stormwater in the Anderson, Indiana area.

FACTUAL BACKGROUND

7. On multiple occasions identified in the Exhibits to this Complaint, Defendant violated the CWA, Title 13 of the Indiana Code, Title 327 of the Indiana Administrative Code, Articles 2 and 5, and its NPDES Permit by, inter alia: (i) discharging pollutants in wastewater at levels exceeding limits established by its NPDES Permit; (ii) failing to comply with monitoring, recording, record keeping, and reporting requirements imposed by its NPDES Permit; (iii) failing to administer an effective and compliant program to ensure pretreatment of wastewater discharged to its wastewater treatment facilities and sewer system; (iv) failing to operate and maintain its wastewater treatment facilities and sewer system as required by law; (v) discharging untreated or partially treated wastewater

in connection with unauthorized bypass discharges; and (vi) discharging untreated wastewater in connection with unauthorized combined sewer overflow discharges.

GENERAL ALLEGATIONS

8. The Defendant has caused the “discharge of pollutants” from “point sources” into the White River within the meaning of CWA Section 502(6), (12), (14), and (16), 33 U.S.C. § 1362(6), (12), (14), and (16). The White River is a “navigable water” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

9. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters of the United States, except in compliance with the CWA. The discharge of pollutants may be authorized by the terms and conditions of an NPDES permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, but only in compliance with the applicable requirements of CWA Section 301, 33 U.S.C. § 1311, and such other conditions as the EPA Administrator determines are necessary to carry out the provisions of the CWA.

10. IDEM is authorized by EPA, pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to administer an NPDES permit program for discharges into navigable waters within its jurisdiction. See 39 Fed. Reg. 26061 (1974). Title 327 of the Indiana Administrative Code, Article 5, prohibits the discharge of pollutants to waters of the State except as authorized by a duly issued NPDES permit. See 327 IAC 5-2-2.

11. On or about October 1, 1988, IDEM issued the Defendant an NPDES Permit, designated Permit No. 0032476, under the authority conferred by CWA Section 402(b). The Defendant’s NPDES Permit was amended on several occasions between 1988 and 1993. That NPDES Permit expired by its terms on July 30, 1993, but has been administratively extended and

remains in full force and effect. The Defendant's NPDES Permit covers discharges from the Defendant's POTW, including its associated sewer system. In addition to imposing pollutant-specific effluent limitations governing discharges by the Defendant, the Defendant's NPDES Permit includes requirements relating to operation and maintenance of its wastewater treatment facilities and sewer system, and requirements concerning monitoring, recording, recordkeeping, and reporting.

12. As required by CWA Section 307(b), 33 U.S.C. § 1317(b), EPA has promulgated "General Pretreatment Regulations for Existing and New Sources of Pollution" (the "Pretreatment Regulations") set forth at 40 C.F.R. Part 403. The Federal Pretreatment Regulations include requirements that a POTW Control Authority develop and implement a Pretreatment Program designed to regulate Industrial Users that discharge industrial wastewater to the POTW. See 40 C.F.R. § 403.8. Title 327 of the Indiana Administrative Code, Article 5 imposes comparable Pretreatment Program requirements on POTW Control Authorities. See 327 IAC 5-19-3. The Federal Pretreatment Regulations at 40 C.F.R. § 403.8 require each affected POTW Control Authority to submit its proposed Pretreatment Program for approval by EPA.

13. The Defendant is a POTW Control Authority subject to the Federal Pretreatment Regulations and 327 IAC 5-19-3. On or about February 5, 1986, EPA approved the City of Anderson's Pretreatment Program.

14. CWA Section 309(b), 33 U.S.C. § 1319(b), authorizes EPA to commence a civil action for appropriate relief when any person violates, inter alia: (i) the general prohibition on unauthorized discharge of pollutants to navigable waters of the United States under CWA Section 301(a), 33 U.S.C. § 1311(a), or (ii) Pretreatment Program requirements imposed by CWA Section

307(d), 33 U.S.C. § 1317(d). Such appropriate relief includes a permanent or temporary injunction, as well as a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997 and up to \$27,500 per day for each violation occurring after January 30, 1997, as provided by CWA Section 309(b), the Civil Penalties Inflation Adjustment Act of 1990 (“CPIAA”), Pub. L. 101-410, and EPA regulations codified at 40 C.F.R. Part 19.

15. 327 IAC 5-2-20 and Indiana Code §§ 13-30-4-1 and 13-14-2-6 authorize the State to commence a civil action for appropriate relief addressing a violation of Title 327 of the Indiana Administrative Code, Article 5. Such appropriate relief includes injunctive relief and civil penalties of up to \$25,000 per day for each violation.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (Unpermitted Discharge of Pollutants)

16. The allegations set forth in Paragraphs 1 through 15 are incorporated herein by reference.

17. During December 1999 and January 2000, the Defendant discharged a variety of pollutants to the White River without authority to do so under the Clean Water Act or State law. The pollutants that the Defendant unlawfully discharged included, but were not limited to: sodium dimethyldithiocarbamate and certain other compounds formed from the chemical, such as carbon disulfide, dimethylamine, and thiram and other thiurams.

18. Defendant’s unauthorized discharge of pollutants to the White River violated CWA Section 301(a), 33 U.S.C. § 1311(a), Indiana Code § 13-30-2-1, and 327 IAC 5-2-2.

19. Each day that the Defendant discharged each unauthorized pollutant constitutes a separate day of violation of CWA Section 301(a), 33 U.S.C. § 1311(a), Indiana Code § 13-30-2-1, and 327 IAC 5-2-2.

20. Pursuant to CWA Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d), the CPIAA, and EPA regulations codified at 40 C.F.R. Part 19, the Defendant is subject to civil penalties payable to the United States of up to \$27,500 per day for each violation after January 30, 1997. Pursuant to Indiana Code § 13-30-4-1, Indiana Code § 13-14-2-6, and 327 IAC 5-2-20, the Defendant is subject to civil penalties payable to the State of up to \$25,000 per day for each violation.

21. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), 327 IAC 5-2-20, and Indiana Code § 13-30-4-1, the Defendant is subject to injunctive relief.

**SECOND CLAIM FOR RELIEF
(Violation of Water Quality Standards)**

22. The allegations set forth in Paragraphs 1 through 21 are incorporated herein by reference.

23. During December 1999 and January 2000, the Defendant discharged a variety of pollutants to the White River which were deleterious and toxic to fish. The pollutants that the Defendant unlawfully discharged included, but were not limited to: sodium dimethyldithiocarbamate and certain other compounds formed from the chemical, such as carbon disulfide, dimethylamine, and thiram and other thiurams.

24. Defendant's discharge of pollutants which were deleterious and toxic to fish violated Indiana Code § 13-18-4-5, Indiana Code § 13-30-2-1, 327 IAC 2-1-2(1), and 327 IAC 2-1-6(a).

25. Each day that the Defendant discharged each unauthorized pollutant constitutes a separate day of violation of Indiana Code § 13-18-4-5, Indiana Code § 13-30-2-1, 327 IAC 2-1-2(1), and 327 IAC 2-1-6(a).

26. Pursuant to Indiana Code § 13-30-4-1, Indiana Code § 13-14-2-6, and 327 IAC 5-2-20, the Defendant is subject to civil penalties payable to the State of up to \$25,000 per day for each violation.

27. Pursuant to 327 IAC 5-2-20 and Indiana Code § 13-30-4-1, the Defendant is subject to injunctive relief.

THIRD CLAIM FOR RELIEF
(Failure to Contain Spills, Respond to the Spills, and Report the Spills to IDEM)

28. The allegations set forth in Paragraphs 1 through 27 are incorporated herein by reference.

29. During December 1999 and January 2000, the Defendant discharged a variety of hazardous and objectionable substances to the White River. Such discharges constitute “spills” under 327 IAC 2-6.1.

30. The Defendant did not: (i) contain the spills so as to prevent additional spilled material from reaching waters of the State; (ii) undertake or cause others to undertake the activities needed to accomplish a response to these spills; (iii) communicate spill reports regarding these spills to IDEM.

31. Defendant’s failure to contain the spills so as to prevent the release of additional spilled material, failure to undertake the actions necessary to respond to the spills, and failure to provide the required spill reports to IDEM are violations of 327 IAC 2-6.1-5 and 327 IAC 2-6.1-7.

32. Pursuant to Indiana Code § 13-30-4-1 and Indiana Code § 13-14-2-6, the Defendants are subject to injunctive relief and liable for civil penalties payable to the State of up to \$25,000 per day of violation for each of the Defendant's violations of 327 IAC 2-6.1-5 and 327 IAC 2-6.1-7.

33. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), 327 IAC 5-2-20, and Indiana Code § 13-30-4-1, the Defendant is subject to injunctive relief.

**FOURTH CLAIM FOR RELIEF
(Unauthorized Discharge of Pollutants)**

34. The allegations set forth in Paragraphs 1 through 33 are incorporated herein by reference.

35. On multiple occasions listed in Exhibit A to this Complaint, the Defendant discharged wastewater to the White River that contained pollutants at levels exceeding limits established by its NPDES Permit.

36. Defendant's unauthorized discharge of pollutants to the White River violated CWA Section 301(a), 33 U.S.C. § 1311(a), Indiana Code § 13-30-2-1, and 327 IAC 5-2-2.

37. Each day that the Defendant discharged each unauthorized pollutant constitutes a separate day of violation of CWA Section 301(a), 33 U.S.C. § 1311(a), Indiana Code § 13-30-2-1, and 327 IAC 5-2-2.

38. Pursuant to CWA Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d), the CPIAA, and EPA regulations codified at 40 C.F.R. Part 19, the Defendant is subject to civil penalties payable to the United States of up to \$25,000 per day for each violation on or before January 30, 1997, and up to \$27,500 per day for each violation after January 30, 1997. Pursuant to Indiana Code

§ 13-30-4-1, Indiana Code § 13-14-2-6, and 327 IAC 5-2-20, the Defendant is subject to civil penalties payable to the State of up to \$25,000 per day for each violation

39. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), 327 IAC 5-2-20, and Indiana Code § 13-30-4-1, the Defendant is subject to injunctive relief.

FIFTH CLAIM FOR RELIEF
(Failure to Minimize Adverse Impact to Navigable Waters)

40. The allegations set forth in Paragraphs 1 through 39 are incorporated herein by reference.

41. Contrary to requirements contained in the Defendant's NPDES Permit, the Defendant failed to take all reasonable steps to minimize any adverse impact to the White River resulting from its noncompliance with effluent limitations in its NPDES permit in December 1999 and January 2000.

42. Defendant's failure to take all reasonable steps to minimize any adverse impact associated with its noncompliance with its NPDES permit in December 1999 and January 2000 violated CWA Section 301(a), 33 U.S.C. § 1311(a), and 327 IAC 5-2-8(3).

43. Each day that the Defendant failed to take all reasonable steps to minimize any adverse impact associated with its non-compliance with its NPDES Permit constitutes a separate day of violation of CWA Section 301(a), 33 U.S.C. § 1311(a), and 327 IAC 5-2-8(3).

44. Pursuant to CWA Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d), the CPIAA, and EPA regulations codified at 40 C.F.R. Part 19, the Defendant is subject to civil penalties payable to the United States of up to \$27,500 per day for each violation after January 30, 1997.

Pursuant to Indiana Code § 13-30-4-1, Indiana Code § 13-14-2-6, and 327 IAC 5-2-20, the Defendant is subject to civil penalties payable to the State of up to \$25,000 per day for each violation

45. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), 327 IAC 5-2-20, and Indiana Code § 13-30-4-1, the Defendant is subject to injunctive relief.

SIXTH CLAIM FOR RELIEF
(Failure to Administer an Effective and Compliant Pretreatment Program)

46. The allegations set forth in Paragraphs 1 through 45 are incorporated herein by reference.

47. Until at least 2000, the Defendant failed to administer an effective and compliant program to ensure pretreatment of wastewater discharged to its wastewater treatment facilities and sewer system.

48. Defendant's failure to administer an effective and compliant pretreatment program violated CWA Section 307, 33 U.S.C. § 1317, and 327 IAC 5-19-3.

49. Each day that the Defendant failed to administer an effective and compliant pretreatment system constitutes a separate day of violation of CWA Section 307, 33 U.S.C. § 1317, and 327 IAC 5-19-3.

50. Pursuant to CWA Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d), the CPIAA, and EPA regulations codified at 40 C.F.R. Part 19, the Defendant is subject to civil penalties payable to the United States of up to \$25,000 per day for each violation on or before January 30, 1997, and up to \$27,500 per day for each violation after January 30, 1997. Pursuant to 327 IAC 5-2-20 and Indiana Code § 13-30-4-1, the Defendant is subject to civil penalties payable to the State of up to \$25,000 per day for each violation.

51. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), 327 IAC 5-2-20, and Indiana Code § 13-30-4-1, the Defendant is subject to injunctive relief.

**SEVENTH CLAIM FOR RELIEF
(Unauthorized Combined Sewer Overflow Discharges)**

52. The allegations set forth in Paragraphs 1 through 51 are incorporated herein by reference.

53. On multiple occasions listed in Exhibit B to this Complaint, the Defendant discharged untreated or partially treated wastewater to the White River in connection with unauthorized combined sewer overflow discharges.

54. Defendant's discharge of pollutants to the White River in connection with unauthorized combined sewer overflow discharges violated CWA Section 301(a), 33 U.S.C. § 1311(a), Indiana Code § 13-30-2-1, and 327 IAC 5-2-2.

55. Each day that the Defendant discharged each unauthorized pollutant constitutes a separate day of violation of CWA Section 301(a), 33 U.S.C. § 1311(a), Indiana Code § 13-30-2-1, and 327 IAC 5-2-2.

56. Pursuant to CWA Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d), the CPIAA, and EPA regulations codified at 40 C.F.R. Part 19, the Defendant is subject to civil penalties payable to the United States of up to \$25,000 per day for each violation on or before January 30, 1997, and up to \$27,500 per day for each violation after January 30, 1997. Pursuant to 327 IAC 5-2-20 and Indiana Code § 13-30-4-1, the Defendant is subject to civil penalties payable to the State of up to \$25,000 per day for each violation.

57. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), 327 IAC 5-2-20, and Indiana Code § 13-30-4-1, the Defendant is subject to injunctive relief.

**EIGHTH CLAIM FOR RELIEF
(Unauthorized Bypass Discharges)**

58. The allegations set forth in Paragraphs 1 through 57 are incorporated herein by reference.

59. On multiple occasions listed in Exhibit B to this Complaint, the Defendant discharged untreated or partially treated wastewater to the White River in connection with unauthorized bypass discharges.

60. Defendant's discharge of pollutants to the White River in connection with unauthorized bypass discharges violated CWA Section 301(a), 33 U.S.C. § 1311(a), Indiana Code § 13-30-2-1, and 327 IAC 5-2-2.

61. Each day that the Defendant discharged each unauthorized pollutant constitutes a separate day of violation of CWA Section 301(a), 33 U.S.C. § 1311(a), Indiana Code § 13-30-2-1, and 327 IAC 5-2-2.

62. Pursuant to CWA Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d), the CPIAA, and EPA regulations codified at 40 C.F.R. Part 19, the Defendant is subject to civil penalties payable to the United States of up to \$25,000 per day for each violation on or before January 30, 1997, and up to \$27,500 per day for each violation after January 30, 1997. Pursuant to 327 IAC 5-2-20 and Indiana Code § 13-30-4-1, the Defendant is subject to civil penalties payable to the State of up to \$25,000 per day for each violation.

63. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), 327 IAC 5-2-20 and Indiana Code § 13-30-4-1, the Defendant is subject to injunctive relief.

NINTH CLAIM FOR RELIEF
(Failure to Operate and Maintain Facilities as Required)

64. The allegations set forth in Paragraphs 1 through 63 are incorporated herein by reference.

65. On multiple occasions listed in Exhibit C to this Complaint, the Defendant failed to operate and/or maintain its wastewater treatment facilities and sewer system as required by its NPDES Permit.

66. Defendant's failure to operate and maintain its wastewater treatment facilities and sewer system as required by its NPDES Permit violated CWA Section 301(a), 33 U.S.C. § 1311(a), and 327 IAC 5-2-8(8).

67. Each day that the Defendant failed to operate and/or maintain its wastewater treatment facilities and sewer system as required by its NPDES Permit constitutes a separate day of violation of CWA Section 301(a), 33 U.S.C. § 1311(a), and 327 IAC 5-2-8(8).

68. Pursuant to CWA Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d), the CPIAA, and EPA regulations codified at 40 C.F.R. Part 19, the Defendant is subject to civil penalties payable to the United States of up to \$25,000 per day for each violation on or before January 30, 1997, and up to \$27,500 per day for each violation after January 30, 1997. Pursuant to 327 IAC 5-2-20 and Indiana Code § 13-30-4-1, the Defendant is subject to civil penalties payable to the State of up to \$25,000 per day for each violation.

69. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), 327 IAC 5-2-20 and Indiana Code § 13-30-4-1, the Defendant is subject to injunctive relief.

TENTH CLAIM FOR RELIEF
(Monitoring, Recording, Record Keeping, and Reporting Violations)

70. The allegations set forth in Paragraphs 1 through 69 are incorporated herein by reference.

71. On multiple occasions listed in Exhibit D to this Complaint, the Defendant failed to comply with monitoring, recording, record keeping, and reporting requirements imposed by its NPDES Permit.

72. Defendant's violation of NPDES Permit monitoring, recording, record keeping, and reporting requirements violated CWA Section 301(a), 33 U.S.C. § 1311(a), and 327 IAC 5-2-8(9).

73. Each day that the Defendant violated each NPDES Permit monitoring, recording, record keeping, and reporting requirement constitutes a separate day of violation of CWA Section 301(a), 33 U.S.C. § 1311(a), and 327 IAC 5-2-8(9).

74. Pursuant to CWA Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d), the CPIAA, and EPA regulations codified at 40 C.F.R. Part 19, the Defendant is subject to civil penalties payable to the United States of up to \$25,000 per day for each violation on or before January 30, 1997, and up to \$27,500 per day for each violation after January 30, 1997. Pursuant to 327 IAC 5-2-20 and Indiana Code § 13-30-4-1, the Defendant is subject to civil penalties payable to the State of up to \$25,000 per day for each violation.

75. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), 327 IAC 5-2-20, and Indiana Code § 13-30-4-1, the Defendant is subject to injunctive relief.

RELIEF REQUESTED

WHEREFORE, Plaintiffs, the United States of America and the State of Indiana, respectfully request that this Court:

- A. Issue a permanent injunction restraining and preventing the Defendant from violating the CWA, 33 U.S.C. § 1251 et seq., Title 13 of the Indiana Code, Title 327 of the Indiana Administrative Code, Articles 2 and 5, and its National Pollutant Discharge Elimination System permit issued pursuant to the CWA.
- B. Order the Defendant to comply with the following legal requirements in connection with any future discharges: (i) CWA Sections 301(a) and 307(d), 33 U.S.C. §§ 1311(a) and 1317(d); (ii) all requirements imposed by the Federal Pretreatment Regulations, 40 C.F.R. chapter I, subchapter N; (iii) Title 327 of the Indiana Administrative Code, Articles 2 and 5; and (iv) all requirements imposed by the Defendant's NPDES Permit.
- C. Order the Defendant to undertake immediately and complete expeditiously all affirmative actions necessary to achieve compliance with the following legal requirements in connection with any future discharges: (i) CWA Sections 301(a) and 307(d), 33 U.S.C. §§ 1311(a) and 1317(d); (ii) all requirements imposed by the Federal Pretreatment Regulations, 40 C.F.R. chapter I, subchapter N; (iii) Title 327 of the Indiana Administrative Code, Articles 2 and 5; and (iv) all requirements imposed by the Defendant's NPDES Permit.

- D. Award the United States civil penalties of up to \$25,000 per day for each day of violation of the CWA occurring on or before January 30, 1997, and up to \$27,500 per day for each day of violation of the CWA occurring since January 30, 1997;
- E. Award the State civil penalties of up to \$25,000 per day for each day of violation of Title 327 of the Indiana Administrative Code, Article 5;
- F. Award Plaintiffs their costs and disbursements for this action; and
- G. Award such other relief as the Court may deem just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

Pursuant to Paragraph 99 of the proposed Consent Decree between the United States, the State of Indiana, and the City of Anderson, I hereby certify that a copy of foregoing Complaint was served on this date by first class mail, postage pre-paid, upon:

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Counsel for the City of Anderson, Indiana

Randall M. Stone

Dated: July ___, 2002